

of a schedule). And the Scheduling Order in this case provided, “This scheduling order will not be modified except by leave of court upon a showing of good cause.” (Doc. 8 at 10.) The inquiry for the court, then, is whether defendant has shown good cause and excusable neglect.

Defendant initially did not provide a reason for the delinquency of its motion. Indeed, defendant filed the motion without seeking leave to do so. But once plaintiff pointed out the untimeliness of the filing, defendant explained that defense counsel had made a calendaring error. Defense counsel believed that the motion was due on January 25, 2014—which was a Saturday—making the motion effectively due on Monday, January 27, 2014. Counsel did not realize that the motion was late until plaintiff brought it to counsel’s attention.

The court determines that defendant has shown both good cause and excusable neglect for filing the motion out of time. This case remains in the early stages, and the court discerns no prejudice to plaintiff (other than having to respond to the motion to dismiss). The delay was minimal, and the court finds that defendant acted in good faith. The motion to dismiss will be considered timely filed.

IT IS THEREFORE ORDERED that Plaintiff’s Motion to Strike as Untimely Defendant’s Motion to Dismiss (Doc. 12) is denied.

IT IS FURTHER ORDERED that Defendant’s Motion for Leave to File Motion to Dismiss Out of Time (Doc. 15) is granted.

Dated this 11th day of April 2014, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge